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HL

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/131,076    08/07/98    KLIGMAN    D    6149-29-U1

000570    HM22/1025  
AKIN GUMP STRAUSS HAUER & FELD LLP  
22ND FLOOR    ONE COMMERCE SQUARE  
2005 MARKET STREET  
PHILADELPHIA PA 19103

EXAMINER
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TRAN, S

ART UNIT	PAPER NUMBER
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1615

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DATE MAILED:

10/25/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

# Office Action Summary

Application No.  
**09/131,076**

Applicant(s)  
**Kligman et al.**

Examiner  
**Susan Tran**

Group Art Unit  
**1615**



☐ Responsive to communication(s) filed on \_\_\_\_\_.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-22 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-22 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **DETAILED ACTION**

Receipt is acknowledged of applicants petition for extension of time filed on 11/20/98, declaration fee and small entity filed 02/01/99, petition filed 02/01/99, request for corrected filing receipt filed 03/22/99, and information disclosure statement filed 08/07/98, and applicant is requested to provide copy of the references for courtesy reason.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guerrero et al. USPN 5,741,497 ('497) in view of Wagner et al. USPN 5,948,416 ('416).

Guerrero discloses compositions and methods for treating dermatologic disorder, chronoaging, wrinkle, and environmental abuse (column 1, line 60 through column 3, lines 25-30). The composition comprising salicylate ester in aqueous form, and the amount is disclosed in column 2, lines 10-58). The composition also comprising ethyl alcohol and propylene glycol (column 3, line 1 through column 4, lines 1-5).

Guerrero relied upon for the reasons stated above. The reference differs from applicants only in the ~~since~~ that a derivative of salicylic acid is used instead of the acid parse.

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Wagner is relied on solely for the teaching of salicylic acid and derivatives thereof as being equivalent (column 4, line 15 through column 6, lines 40-56) in cosmetic formulations.

It would have been prima facie obvious to one of the ordinary skill in the art to use salicylic acid in Guerrero to treat the skin disorder. The expected result would be an cosmetically improved skin.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Causse et al., and Waltman are cited as being of interest for teaching compositions comprising salicylic acid to treat skin disorder.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday to Friday from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

  
THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600